



Agricultural Marketing Service

7 CFR Part 1260

[Doc. No. AMS-LP-22-0002]

Beef Promotion and Research Order; Reapportionment and Technical Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act of 1985 (Act), to reflect changes in domestic cattle inventories as well as changes in levels of imported cattle, beef, and beef products that have occurred since the Board was last reapportioned in July 2020. These adjustments are required by the Beef Promotion and Research Order (Order) and, if adopted, would result in a decrease in Board membership from 101 to 99, effective with the Secretary of Agriculture's (Secretary) appointments from nominees requested in Spring of 2023. The proposed rule would also update the list of Qualified State Beef Councils (QSBCs) in the Order by removing the Maryland Industry Beef Council which voted to dissolve their State beef council.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments should be posted online at <https://www.regulations.gov>.

Comments received will be posted without change, including any personal information provided. All comments should reference the document number AMS-LP-22-0002, the date of submission, and the page number of this issue of the **Federal Register**.

Comments may also be sent to Lacey Heddlesten, Agricultural Marketing Specialist; Research and Promotion Division; Livestock and Poultry Program, AMS, USDA; STOP

0251, 1400 Independence Avenue SW, Washington, DC 20250. Comments will be made available for public inspection at the above address during regular business hours or via the internet at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Lacey Heddlesten, Agricultural Marketing Specialist, Research and Promotion Division, at (620) 717-3834; or by email at Lacey.Heddlesten@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866, and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule does not meet the definition of a significant regulatory action contained in section 3(f) of E.O. 12866 and therefore, the Office of Management and Budget (OMB) has waived review of this action.

Executive Order 12988

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

Section 11 of the Act (7 U.S.C. 2910) provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the U.S. or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 13175

This proposed rule has been reviewed under E.O. 13175 – Consultation and

Coordination with Indian Tribal Governments. E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on: (1) policies that have tribal implication, including regulation, legislative comments, or proposed legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Agricultural Marketing Service (AMS) has assessed the impact of this proposed rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under E.O. 13175. AMS regularly meets with tribal leaders and discuss matters of mutual interest regarding the marketing of agricultural products. AMS will work with the U.S. Department of Agriculture's (USDA) Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the regulations.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*) the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. part 35), the information collection and recordkeeping requirements contained in the Order and accompanying Rules and Regulations have previously been approved by OMB and were assigned OMB control number 0581-0093.

Background and Proposed Action

The Board was initially appointed on August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901-2911), and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, while importer representation is based on the conversion of the volume of imported cattle, beef, and beef products into live animal equivalencies.

Reapportionment

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted by certified producer and importer organizations. A producer may only be nominated to represent the State or unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years, but not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States. Further, section 1260.141(d) allows the board to recommend to the Secretary a modification in the number of cattle per unit necessary for representation of Board seats.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit is entitled to an additional Board member for

each additional 1 million head of cattle within the unit, as provided in section 1260.141(e)(4). Further, as provided in section 1260.141(e)(3), importers are represented by a single unit, with their number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(f) of the Order states in determining the volume of cattle within the units, the Board and the Secretary shall utilize the information received by the Board pursuant to sections 1260.201 and 1260.202 industry data and data published by USDA. The proposed producer representation is based on an average of the inventory of cattle in the various States on January 1 in 2020, 2021, and 2022 as reported by USDA's National Agricultural Statistics Service (NASS). The proposed importer representation is based on a combined total average of the 2019, 2020, and 2021 live cattle imports as published by USDA's Economic Research Service (ERS) and the average of the 2019, 2020, and 2021 live animal equivalents for imported beef and beef products.

In considering reapportionment, the Board reviewed cattle inventories as of January 1 in 2020, 2021, and 2022, as well as cattle, beef, and beef product import data for the period of January 1, 2019, to December 31, 2021. The Board determined that an average of the inventory of cattle on January 1 in 2020, 2021, and 2022 best reflects the number of cattle in each State or unit since publication of the last reapportionment rule in 2020 (85 FR 39461). The Board reviewed data published by ERS to determine proper importer representation. The Board recommended the use of the average of a combined total of the 2019, 2020, and 2021 cattle import data and the average of the 2019, 2020, and 2021 live animal equivalents for imported beef products. The method used to calculate the total number of live animal equivalents was the same as that used in the previous reapportionment of the Board. The live animal equivalent weight was changed in 2006 from 509 pounds to 592 pounds (71 FR 47074).

Based on their 3-year analysis, the Board is recommending to the Secretary the following changes:

State/Unit	Increase/Decrease	Current Representation	Revised Representation
Idaho	+1	2	3
Montana	-1	3	2
Pennsylvania	-1	2	1
Net Change	-1		

Further, Wisconsin's 3-year average cattle inventory is less than 1 percent (33,000 head) below the threshold of 3.5 million head of cattle needed to maintain 4 Board seats. The cattle inventory report estimates each state's inventory through a producer survey which is conducted each January by NASS¹. The survey is subject to a margin of error due to sampling size, response rates, etc. The average coefficient of variation for Wisconsin's total cattle inventory in the 2020, 2021, 2022 cattle inventory reports is 3.4 percent ($\pm 34,000$ head). As the coefficient of variation is greater than the amount by which the inventory is under the 3.5 million head threshold, the Board voted on July 27, 2022, to allow Wisconsin to maintain 4 Board seats instead of losing 1, for a total of 3 seats.

The Order section 1260.141, however, does not take into consideration the margin of error when analysis is conducted. Therefore, AMS is proposing the Order be applied without using the NASS margin of error. Thus, the Secretary proposes to adjust Board membership from 101 to 99 with Wisconsin losing 1 seat.

If the recommendation of the Board is adopted by the Secretary, the reapportionment would take effect in the 2023 nomination process and effect the number of board members the Secretary appointments to fill positions early in the year 2024.

Technical Amendment

The proposed rule would also update the list of QSBCs in the Order by removing

¹ <https://usda.library.cornell.edu/concern/publications/h702q636h>

the Maryland Industry Beef Council which unanimously voted to dissolve their State beef council during the September 14, 2022, board meeting.

Initial Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic effect of this action on small entities and has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In 2022, the Small Business Administration (SBA) (13 CFR 121.201) published a final rule (84 FR 64013) that updated its size standards based on income or employee numbers for various small business falling under the North American Industry Classification System (NAICS). Within that rule, the SBA threshold for “Beef Cattle Ranching and Farming” (NAICS code 112111) operations to qualify small businesses was raised from annual sales of \$1 million or less to annual sales of \$2.5 million or less.

According to the NASS 2017 Census of Agriculture, the number of U.S. operations with beef cattle totaled 729,046 and with cattle of any type totaled 882,692². The same Census of Agriculture data shows that roughly 4 percent of operations with cattle, or 31,476 operations, have annual sales receipts of \$1,000,000 or more, the small business standard prior to the 2022 revision.³ No further breakout in the Census of Agriculture data is made to account for the new, higher SBA standard. However, the vast majority of cattle producers, 96 percent, would be considered small businesses under the new SBA standards. It should be noted that producers are only indirectly impacted by the proposed rule.

2 <https://www.nass.usda.gov/AgCensus/index.php>

3 <https://quickstats.nass.usda.gov/results/758A0A38-2BF4-39CE-90EF-A581BFEA3E81>

Cattle, beef, and veal importers are also impacted by the proposed rule. Based on data available on membership in the Meat Import Council of America, AMS estimates that approximately 190 firms import beef or beef products. AMS is not aware of any data that reports the number of beef-importing entities that meet the SBA definition of small businesses.

In addition to cattle producers, affected entities under this rule change include meat and meat-product merchant wholesalers (wholesalers), classified under NAICS code 424470, and meat processors from carcass (processors), classified under NAICS code 311612. The SBA thresholds for both these businesses to qualify as small are that they have fewer than 1,000 employees. The most current data from the Census of Manufacturing states that all 2,376 wholesalers were small businesses (in 2017)⁴ and that all 1,423 processors were small business (in 2020)⁵.

Recent import trade data was also considered for understanding the overall dynamics of this industry segment. The Foreign Agricultural Service reports monthly trade data for traded agricultural products by product type. Based on analysis of that trade data and consumption data collected in the USDA's World Agricultural Demand and Supply Estimates, over the 2017 to 2022 period, cattle imports ranged between 1.8 and 2.3 percent of the total cattle inventory and that beef imports ranged from 9.8 to 10.7 percent of total supply. Veal imports during that time were negligible as a share of domestic production.

The proposed rule imposes no new burden on the industry, as it only adjusts representation on the Board to reflect changes in domestic cattle inventory, as well as in cattle and beef imports. Additionally, the Order section 1260.141 does not take into

⁴https://data.census.gov/profile/424470__Meat_and_meat_product_merchant_wholesalers?g=0100000US&n=424470

⁵ https://data.census.gov/profile/311612_-_Meat_and_meat_product_merchant_wholesalers?g=0100000US&n=311612

consideration the margin of error when analysis is conducted. Therefore, AMS is proposing the Order guidance to be applied without using the NASS margin of error and thus the Secretary proposes to adjust Board membership from 101 to 99. Following the proposed rule, a 30-day comment period is provided to allow interested industry persons to respond to this proposal.

AMS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 1260 as follows:

PART 1260 – BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901-2911 and 7 U.S.C. 7401.

2. Revise § 1260.141 paragraph (a) and the table to paragraph (a) to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2023 Board nominations and the associated appointments effective early in the year 2024, the United States shall be divided into 38 geographical

units and 1 unit representing importers, for a total of 39 units. The number of Board members from each unit shall be as follows:

Table 1 to Paragraph (a) - Cattle and Calves ¹

STATE/UNIT	(1,000 HEAD)	DIRECTORS
1. Alabama	1,285	1
2. Arizona	967	1
3. Arkansas	1,733	2
4. Colorado	2,700	3
5. Florida	1,670	2
6. Georgia	1,077	1
7. Idaho	2,507	3
8. Illinois	1,047	1
9. Indiana	833	1
10. Iowa	3,800	4
11. Kansas	6,483	6
12. Kentucky	2,073	2
13. Louisiana	777	1
14. Michigan	1,137	1
15. Minnesota	2,203	2
16. Mississippi	917	1
17. Missouri	4,217	4
18. Montana	2,383	2
19. Nebraska	6,800	7
20. New Mexico	1,373	1
21. New York	1,433	1
22. North Carolina	798	1
23. North Dakota	1,893	2
24. Ohio	1,283	1
25. Oklahoma	5,217	5
26. Oregon	1,260	1
27. Pennsylvania	1,430	1
28. South Dakota	3,900	4
29. Tennessee	1,783	2
30. Texas	12,900	13
31. Utah	803	1
32. Virginia	1,410	1
33. Wisconsin	3,467	3

34. Wyoming	1,290	1
35. Northwest Unit		
Alaska	17	
Hawaii	142	
Washington	1,157	
Total	1,316	1
36. Northeast Unit		
Connecticut	48	
Delaware	13	
Maine	77	
Maryland	174	
Massachusetts	36	
New Hampshire	32	
New Jersey	26	
Rhode Island	4	
Vermont	248	
Total	657	1
37. Mid-Atlantic Unit		
South Carolina	327	
West Virginia	380	
Total	707	1
38. Southwest Unit		
California	5,167	
Nevada	465	
Total	5,632	6
39. Importers Unit ²	7,466	7

^{1/} 2020, 2021, and 2022 average of January 1 cattle inventory data.

^{2/} 2019, 2020, and 2021 average of annual import data.

* * * * *

3. Revise § 1260.315 to read as follows:

§ 1260.315 Qualified State Beef Councils.

The following State beef promotion entities have been certified by the Board as Qualified State Beef Councils:

- (a) Alabama Cattleman's Association.
- (b) Arizona Beef Council.
- (c) Arkansas Beef Council.
- (d) California Beef Council.
- (e) Colorado Beef Council Authority.
- (f) Delaware Beef Advisory Board.
- (g) Florida Beef Council, Inc.
- (h) Georgia Beef Board, Inc.
- (i) Hawaii Beef Industry Council.
- (j) Idaho Beef Council.
- (k) Illinois Beef Association, Inc.
- (l) Indiana Beef Council, Inc.
- (m) Iowa Beef Cattle Producers Association/dba/Iowa Beef Industry Council.
- (n) Kansas Beef Council.
- (o) Kentucky Cattleman's Association, Inc.
- (p) Louisiana Beef Industry Council.
- (q) Michigan Beef Industry Commission.
- (r) Minnesota Beef Council.
- (s) Mississippi Beef Council.
- (t) Missouri Beef Industry Council, Inc.
- (u) Montana Beef Council.
- (v) Nebraska Beef Council.
- (w) Nevada Beef Council.
- (x) New Jersey Beef Industry Council.
- (y) New Mexico Beef Council.
- (z) New York Beef Industry Council.

- (aa) North Carolina Cattlemen’s Beef Council.
- (bb) North Dakota Beef Commission.
- (cc) Ohio Beef Council.
- (dd) Oklahoma Beef Council.
- (ee) Oregon Beef Council.
- (ff) Pennsylvania Beef Council.
- (gg) South Carolina Beef Council.
- (hh) South Dakota Beef Industry Council.
- (ii) Tennessee Beef Industry Council.
- (jj) Texas Beef Council.
- (kk) Utah Beef Council.
- (ll) Vermont Beef Industry Council.
- (mm) Virginia Beef Industry Council.
- (nn) Washington State Beef Commission.
- (oo) West Virginia Beef Council, Inc.
- (pp) Wisconsin Beef Council, Inc.
- (qq) Wyoming Beef Council.

Melissa Bailey,

Associate Administrator,

Agricultural Marketing Service.

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